

### **REMARKS**

This Amendment is in response to the Office Action mailed June 30, 2006. Claims 1-38 are pending and have been rejected by the Office Action. By this Amendment, claims 1 and 20 have been amended. Favorable action is requested in view of the remarks below.

The interview of October 10, 2006 is appreciated. The Examiner's summary of the interview is substantially correct. Proposed amendments to the claims were discussed.

The Examiner has indicated that the claims are not entitled to the benefit of the priority application 10/326535 and 60/340858. None of the prior art cited by the Examiner requires the benefit of the filing date as a basis for patentability. Accordingly, the Applicant does not take a position regarding the Examiner's statements regarding priority.

Claims 1-9, 12, 15-25 and 27-32 have been rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Pat. No. 5,853,422 issued to Huebsch et al. (the "Huebsch" patent). The Huebsch patent is entitled "Apparatus and method for closing a septal defect" and discloses a catheter delivered device to close a septal defect.

The Examiner considers the Huebsch patent to disclose, in Fig. 3, the elements recited in the claims identified above. The disclosure of the Huebsch patent does not meet the limitation recited in the independent claim 1 in that the Huebsch patent does not disclose an anchor member "comprising a generally cylindrical member" as recited in claims 1 and 20. The "cylindrical shaft 12" of the Huebsch patent refers to almost the entire device as configured in the delivery catheter and not to an anchor member. The anchor member in the Huebsch patent is formed of "struts 22" radially emanating from the axis of the device (see Figs. 2-4, 5a and Col. 4, lines 20-24 and 38-43 of the Huebsch patent). Further, the Applicant has clarified the distinction between Huebsch by amending the claim to include the limitation that the center joint is attached to at least one of the generally cylindrical members at a side of the generally cylindrical member. Further the center joint is recited as flexible.

Accordingly, claims 1 and 20 are allowable over the Huebsch patent. Further, the Examiner has identified no suggestion in the Huebsch patent to modify the disclosure to meet the claim limitation. Claims 2-10, 12 and 15-19 are allowable at least because they depend from claim 1 and the novel features recited. Claims 21-25 and 27-32 are allowable at least because they depend from claim 20 and the novel features recited.

Claims 13 and 33 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the Huebsch patent in view of U.S. Pat. No. 5,649,959 issued to Hannam et al. (the "Hannam" patent). The Huebsch patent has been described above. The Hannam patent is entitled "Assembly for sealing a puncture in a vessel" and discloses a bioabsorbable assembly for sealing an incision or puncture in the body of the patient including a first member which is positioned generally along the wall of the blood vessel, duct, body cavity or lumen of the patient and a gelatinous material which is injected into the incision or puncture to seal it.

As discussed above, the Huebsch patent does not meet the claim limitations recited in independent claims 1 and 20, from which claims 13 and 33, respectively, indirectly depend. The Hannam patent does not disclose the missing claim limitations from the Huebsch patent. Therefore, the combination of the Huebsch patent and the Hannam patent does not meet the claim limitations recited in independent claims 1 and 20. Claims 13 and 33 are allowable at least because they depend from claims 1 and 20, respectively, and the novel features recited.

Claims 11 and 14 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the Huebsch patent in view of U.S. Pat. No. 5,776,183 issued to Kanesaka et al. (the "Kanesaka" patent). The Huebsch patent has been described above. The Kanesaka patent is entitled "Expandable stent" and discloses an expandable tubular reinforcing member used for a body lumen, wherein the reinforcing member is basically formed of a plurality of rows of expandable joint members and a plurality of rows of flexible elongated members.

As discussed above, the Huebsch patent does not meet the claim limitations recited in independent claim 1, from which claims 11 and 14 indirectly depend. The Kanesaka patent does not disclose the missing claim limitations from the Huebsch patent. Therefore, the combination of the Huebsch patent and the Kanesaka patent does not meet the claim limitations recited in independent claim 1. Claims 11 and 14 are allowable at least because they depend from claim 1 and the novel features recited.

Claim 26 has been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the Huebsch patent as a matter of design choice. The Examiner considers that "Huebsch teaches all aspects of preceding claims 20-24 [] but fails to disclose wherein said angle  $\theta$  is greater than 0 degrees and less than about 45 degrees."

As discussed above, the Huebsch patent does not meet the claim limitations recited in independent claim 20, from which claim 26 indirectly depends. Furthermore, the Huebsch patent does not disclose any range of angles between struts 22 and the central portion 18. In fact, the

Huebsch patent does not even recite the word "angle." Claim 26 is allowable at least because it depends from claim 1 and the novel features recited.

The Examiner has rejected 1-3, 3-7, 19-24, 29, 34-36 as unpatentable over Sideris, U.S. Patent No. 5,284,488, as "a matter of design choice." The Examiner recognizes that "Sideris fails to teach the anchors comprising a generally cylindrical member slit along the central portion of its length." See Office Action Mailed June 30, 2006, page 13. The Applicants respectfully traverse the rejection. Additionally, the claim amendments are not taught or suggested by Sideris. Accordingly, the claims are allowable over the Sideris and the other art of record.

In view of the above amendment and comments, Applicants believe that all claims are allowable. Applicants submit that no new matter has been added by this Amendment. Early and favorable action is requested.

Respectfully submitted,



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